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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of ) MM DOCKET NO. 95-154  
CONTEMPORARY MEDIA, INC. )  
Licensee of Stations WBOW, WZZQ, and )  
WZZQ-FM, Terre Haute, Indiana )  
Order to Show Cause Why the Licenses for Stations )  
WBOW, WZZQ, and WZZQ-FM, Terre Haute, )  
Indiana, Should Not Be Revoked )  
CONTEMPORARY BROADCASTING, INC. )  
Licensee of Station KFMZ(FM), Columbia Missouri, and )  
Permittee of Station KAAM-FM, Huntsville, Missouri )  
(unbuilt) )  
Order to Show Cause Why the Authorizations for )  
Stations KFMZ(FM), Columbia, Missouri, and KAAM-FM, )  
Huntsville, Missouri, Should Not Be Revoked )  
LAKE BROADCASTING, INC. )  
Licensee of Station KBMX(FM), Eldon, Missouri and )  
Permittee of Station KFXE(FM), Cuba, Missouri )  
(unbuilt) )  
Order to Show Cause Why the Authorizations for )  
Stations KBMX(FM), Eldon, Missouri, and KFXE(FM), )  
Cuba, Missouri, Should Not Be Revoked )  
LAKE BROADCASTING, INC. ) File No. BPH-921112MH  
For a Construction Permit for New FM Station on )  
Channel 244A at Bourbon, Missouri )

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REQUEST FOR ORAL ARGUMENT**

Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. (together, the "Licensees"), by their attorneys, pursuant to §1.277(c) of the Commission's Rules, hereby request oral argument on the Initial Decision, FCC 97D-09, released August 21, 1997 ("I.D."), the Licensees' Exceptions, and the Mass Media Bureau's ("Bureau") Reply to Exceptions ("Reply") in this proceeding. In support whereof, the Licensees show the following:

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1. The Commission grants oral argument "only...where such oral presentations will assist in the resolution of the issues presented". 47 CFR §1.277(c). However, the Commission has also stated that it will hear argument where "extraordinary circumstances" are involved. See Comparative Hearing Process, 6 FCC Rcd 157, 163 ¶¶45-46 (1990). As the Licensees will now demonstrate, the subject case presents several unique and complex issues of Commission law and policy pertaining to broadcast license revocations, which themselves constitute "extraordinary circumstances" warranting oral argument. Moreover, the Exceptions and Reply are so diametrically opposed on key points of law and fact that oral argument will undoubtedly assist the Commission in resolving the novel issues herein.

2. Specifically, the I.D. recommends that the maximum sanction of license revocation be imposed on the Licensees, which own five radio stations and two construction permits in Indiana and Missouri. For as long as 30 years, the Licensees have operated the subject stations in exemplary fashion with virtually an unblemished record. The I.D., however, concludes that license revocation is warranted because of the felony convictions of the Licensees' primary principal, Michael Rice, for sexual misconduct and because of the Licensees' alleged misrepresentations and lack of candor in certain reports filed with the Commission concerning Mr. Rice's post-arrest status. Where, as here, five licensed stations have been given the "death sentence" and are fighting for their "lives," oral argument is especially appropriate to give the Licensees every opportunity to be heard and to vindicate themselves.

3. Under §312 of the Communications Act of 1934, the Bureau must prove by a preponderance of the evidence that license revocation is warranted, but the Bureau has failed to do so. Instead, in an unabashed attempt to prejudice the Commission's consideration of the case

against the Licensees, the Bureau emphasizes Mr. Rice's non-FCC related criminal misconduct with hyperbole and inflammatory language on almost every page of its Reply.

4. Two examples suffice to demonstrate the Reply's biased rhetoric. First, while the I.D. (§§10-11) found that Mr. Rice had been convicted of 12 felony acts involving five teenagers over five years, the Bureau (§18) employs shock language to mischaracterize the convictions as involving "the systematic and protracted exploitation of children". Importantly, there is absolutely no record evidence to support this highly inflammatory and inaccurate charge. Second, while the I.D. (§§153, 154) concluded that the Licensees enjoyed a "collective good record of compliance with the Commission's rules and policies" and that "it does not appear that Rice's criminal activities affected the broadcast operations of the Licensees' stations," the Bureau (§§14 and 30) nevertheless asserts -- without a scintilla of factual support -- that, despite the broadcast awards that Mr. Rice and the Licensees' stations have won over the years and despite the lack of any nexus between the stations and Mr. Rice's criminal misconduct, "it is improbable that Rice would ever be able to provide the best practicable service to the public" (if he resumed station control following his release from prison), and that levying only a monetary forfeiture against the Licensees "would trivialize the crime that Rice has committed against the communities he is licensed to serve".

5. Significantly, there is no legal basis for penalizing the Licensees or their stations for Mr. Rice's "crimes...against the communities he is licensed to serve," because Mr. Rice did not commit any crimes against "communities" and because Mr. Rice's crimes had absolutely nothing to do with the Licensees' stations. When the Reply portrays Mr. Rice as a type of Frankenstein monster who should be banished from society, the Bureau should be ashamed to

use this tactic to try to deny the Licensees an impartial hearing before the Commission. Under these circumstances, the Licensees submit that oral argument is clearly needed to set the record straight so that the Commission's ultimate decision can be based on the real record evidence herein and the proper legal framework.

6. Foremost among the legal issues upon which the Licensees request oral argument is their challenge to the validity of the Commission's 1986 and 1990 Character Policy Statements<sup>1</sup> pursuant to which licenses may be revoked because of non-FCC-related felonious misconduct of a licensee's principal. This policy, we submit, is unlawful where, as here: a) there is no nexus between Mr. Rice's sexual misconduct and the Licensees' broadcast activities, and b) such sexual misconduct has no bearing on the Licensees' propensity to be truthful and compliant with the Commission's rules and policies. While we believe that judicial precedent fully supports a nexus requirement, neither the I.D. nor the Bureau's Reply addresses the legality of CPS-1&2. Instead, they strain to find an artificial nexus. While this subject is fully addressed in Paragraphs 7-18 of the Licensees' Exceptions, the Licensees urge that this question of law and fact is both one of first impression and also so central to their case that oral argument will greatly assist the Commission in resolving the issue.

7. A second issue warranting oral argument involves the Licensees' showing (Exceptions, ¶¶ 29-48) that they did not misrepresent facts or lack candor in reports filed with

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<sup>1</sup> See Character Policy Statement, ("CPS-1"), 102 FCC 2d 1179 (1986), recon. granted in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom. National Ass'n for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987); and Policy Statement and Order ("CPS-2"), 5 FCC Rcd 3252 (1990), recon. granted in part, 6 FCC Rcd 3448 (1991), partial stay granted, 6 FCC Rcd 4787 (1991), errata, 6 FCC Rcd 5017 (1991), recon. granted in part, 7 FCC Rcd 6564 (1992). CPS-1 and CPS-2, together, are referred to herein as "CPS-1&2".

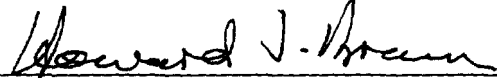
the Commission concerning Mr. Rice's post-arrest activities. Here, the I.D. and the Bureau lose sight of the forest from the trees by becoming fixated with identifying Mr. Rice's activities and opining whether those activities had any managerial or operational impact on the Licensees' stations, rather than focusing on the state of the Licensees' knowledge of such purported activities. However, and most importantly, the designated issue is a reporting issue, which was meant to inquire into whether the Licensees knew about Mr. Rice's activities (whatever they were), whether their reports were adequately worded in light of what the Licensees knew, and, if not, whether there was an intent to deceive demonstrated in the reports. Again, oral argument will allow the Licensees to put this important issue into proper perspective. And, in this regard, the Commission will see how there is ample basis for rejecting the ALJ's witness credibility findings and the ALJ's and Bureau's notion that the Licensees' reports were fatally defective because they did not contain a sufficiently "clear statement" about Mr. Rice's activities.

8. Finally, the Licensees urge that oral argument is warranted concerning whether the I.D.'s Draconian sanction of five license revocations violates the Excessive Fines Clause of the Eighth Amendment to the Constitution and applicable judicial precedent, apart from disrupting the lives of nearly 60 innocent employees and imposing a multi-million dollar loss on the Licensees. If the Commission feels compelled to sustain the I.D.'s findings, revocation of all five broadcast licenses and two permits is wholly unjustified when lesser sanctions exist, have been applied in other revocation cases, and would suffice here.

WHEREFORE, in light of the foregoing, the Licensees respectfully requests that the Commission set this case for oral argument on the issues identified above and any other matters which the Commission wishes to specify.

Respectfully submitted,

**CONTEMPORARY MEDIA, INC.**  
**CONTEMPORARY BROADCASTING, INC.**  
**LAKE BROADCASTING, INC.**

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Dated: December 2, 1997

CERTIFICATE OF SERVICE

I, Gillian Kirkpatrick, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 2nd day of December, 1997, I have caused to be hand-delivered a copy of the foregoing "Request for Oral Argument" to the following:

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